

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

06/24/2002

CLERK OF THE COURT  
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

LC 2001-000729

FILED: \_\_\_\_\_

STATE OF ARIZONA

BARTON J FEARS

v.

GUNTHER HERRMANN

ROBERT J CAMPOS

PHX CITY MUNICIPAL COURT  
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. 8956622

Charge: SOLICITATION OF PROSTITUTION

DOB: 10/22/42

DOC: 01/25/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted by Appellant.

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The only issue raised by Appellant concerns the trial judge's denial of Appellant's Motion for Judgment of Acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure. A judgment of acquittal is required when there is no "substantial evidence to warrant a conviction."<sup>1</sup> When reviewing the sufficiency of the evidence, an appellate court must not reweigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>2</sup> Evidence should be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.<sup>3</sup> If there are conflicts in favor of sustaining the verdict and against the Defendant.<sup>4</sup> The Arizona Supreme Court has explained in State v. Tison<sup>5</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>6</sup>

In this case, Appellant, Gunther Herrmann, claims that there was insufficient evidence presented by the State that he "intended" to complete the act of prostitution which he

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<sup>1</sup> State v. Doss, 192 Ariz. 408, 966 P.2d 1012 (App. 1998).

<sup>2</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980).

<sup>3</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d (1982).

<sup>4</sup> In Re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77 P.490 (1889).

<sup>5</sup> Supra.

<sup>6</sup> Id. At 553, 633 P.2d at 362.

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solicited. Citing State v. Crisp<sup>7</sup>. Appellant claims the trial judge erred in denying his Rule 20 Motion for Judgment of Acquittal. Clear evidence of Appellant's intent to complete the act that he had negotiated may be inferred from his conversations with Phoenix Police Officer Kathleen Packer. Appellant's conversation with Officer Packer is summarized in the court's record.<sup>8</sup> Appellants specifically conveyed to Officer Packer that he was "looking for a date"<sup>9</sup> and negotiation with Officer Packer for a mutually agreeable price for the sexual act.<sup>10</sup> Additionally, when the uniformed police officers attempted to approach Appellant's car, he immediately attempted to drive away and escape from the police officers. Appellant's attempt to escape also reflects a consciousness of guilt- - more circumstantial evidence of Appellant's intent to complete the act which was the subject of his negotiations with a person whom he believed to be a prostitute. Clearly, substantial evidence was presented to the trial judge and jury in support of the charge for which Appellant was convicted.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

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<sup>7</sup> 175 Ariz. 281, 851 P.2d 735 (1993).

<sup>8</sup> R.T. of July 6, 2001, at pages 29-35.

<sup>9</sup> Id at page 34.

<sup>10</sup> Id.